

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CEMCO, LLC,

Plaintiff,

v.

KPSI INNOVATION, INC., et al.,

Defendants.

CASE NO. C23-0918JLR

ORDER

Before the court is Plaintiff CEMCO, LLC's ("CEMCO") stipulated motion to clarify the confidentiality of trial exhibit A-0082. (Mot. (Dkt. # 259).) Having reviewed the motion, the relevant portions of the record, and the applicable law, the court GRANTS the motion and ORDERS that trial exhibit A-0082 remain sealed and must be filed under seal for purposes of Defendants' appeal.¹

¹ On April 2, 2025, Defendants filed a notice of appeal to the Federal Circuit. (NOA (Dkt. # 249).) "Once a notice of appeal is filed, the district court is divested of jurisdiction over the matters being appealed." *Nat. Res. Def. Council v. Southwest Marine Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001). The parties do not address the court's jurisdiction. (*See generally* Mot.)

1 On September 20, 2023, the court granted CEMCO's unopposed motion to file
2 under seal a license agreement between CEMCO and Clarkwestern Dietrich Building
3 Systems LLC ("ClarkDietrich"). (9/20/23 Order (Dkt. # 41).) The license agreement
4 was designated "highly confidential" under a protective order entered in a prior litigation.
5 (See 9/20/23 Blickensderfer Decl. (Dkt. ## 39, 40 (sealed)) ¶¶ 4-5, Ex. A.) On March 13,
6 2024, the court entered a protective order governing confidential material in this action.
7 (3/13/24 Order (Dkt. # 74).) In relevant part, the court's order included provisions for
8 applying confidentiality designations to material in this action; filing such designated
9 material; and for challenging confidentiality designations. (See *id.* at 2, 4-6.)

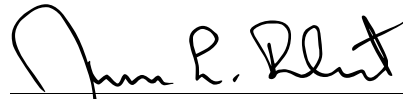
10 On December 6, 2024, at the jury trial in this case, the parties stipulated to the
11 admissibility of the sealed license agreement between CEMCO and ClarkDietrich as trial
12 exhibit A-0082, and the exhibit was admitted into evidence. (12/6/24 Tr. (Dkt. # 232)
13 at 684:7-13); (Ex. List (Dkt. # 210) at 17 (indicating admission of trial exhibit A-0082).)
14 At the time, the parties did not observe that the license agreement had been filed under
15 seal. (See *generally* 12/6/24 Tr. at 684.) The court advised that trial exhibit A-0082 was
16 "admitted and may be published when necessary." (12/6/24 Tr. at 684:11-12). The
17 parties did not publish the exhibit to the jury during the trial. (See *generally* Mot. at 2;
18 12/6/24 Tr.)

19
20
21 _____
22 The court, however, concludes that it retains jurisdiction to clarify the confidentiality of trial
exhibits under an exception for judicial acts that "preserve[] the status quo and d[o] not
materially alter the status of the case on appeal." *Nat. Res. Def. Council*, 242 F.3d at 1166.

1 Accordingly, pursuant to the court's order granting leave to file the license
2 agreement between CEMCO and ClarkDietrich under seal (*see* 9/20/23 Order), the court
3 concludes that the license agreement between CEMCO and ClarkDietrich remains under
4 seal, and that the parties must file trial exhibit A-0082 under seal for purposes of
5 Defendants' appeal. Neither party moved to unseal the license agreement or attempted to
6 use the procedures in the court's protective order to challenge the license agreement's
7 confidentiality designation. (*See generally* Dkt.) Additionally, although trial exhibit A-
8 0082 was admitted into evidence at trial, it was not published, and it has never been filed
9 on the docket except under seal. (*Id.*) Therefore, it has never been publicly viewed or
10 viewable in this action.

11 For the foregoing reasons, the court GRANTS the stipulated motion (Dkt. # 259)
12 and ORDERS that trial exhibit A-0082 be filed under seal for purposes of the parties'
13 appeal.

14
15 Dated this 14th day of May, 2025.

16 
17 JAMES L. ROBERT
United States District Judge
18
19
20
21
22